

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: GUIDANT CORP. IMPLANTABLE
DEFIBRILLATORS PRODUCTS LIABILITY
LITIGATION

MDL No. 05-1708 (DWF/AJB)

This Document Relates to:

Lois Brady-Long, individually and on
behalf of the deceased, Michael Long,

v. Civil No. 06-2124 (DWF/AJB)

Guidant Corporation.

**ORDER REGARDING
GUIDANT'S MOTIONS
TO DISMISS FOR FAILURE TO
COMPLY WITH THIS COURT'S
JANUARY 31, 2006 ORDER**

Kevin Weiss and Craig Weiss,
individually, and on behalf of the
deceased, Bernard Weiss,

v. Civil No. 06-2126 (DWF/AJB)

Guidant Corporation.

On August 22, 2006, pursuant to Federal Rules of Civil Procedure 37(b)(2)(C) and 41(b), Guidant filed Motions to Dismiss for Failure to Comply with this Court's January 31, 2006, Order against Brady-Long and Kevin and Craig Weiss (collectively, "Weiss"). On September 20, 2006, the Court ordered Brady-Long and Weiss to submit oppositions to Guidant's Motions no later than October 10, 2006. On that date, plaintiffs submitted separate two-sentence oppositions, asking that Guidant's Motions be dismissed because plaintiffs had served their PFSs on Guidant.

In its reply memorandum with respect to Brady-Long, Guidant conceded that Brady-Long's PFS was substantially complete, but it nonetheless asked that its Motion be granted because she had prejudiced Guidant by her repeated failures to abide by the Court's Orders. In its reply memorandum with respect to Weiss, Guidant asked that its Motion be granted because Weiss had failed to submit a substantially completed PFS and had prejudiced Guidant. In response, Brady-Long and Weiss improperly filed sur-replies without first asking for permission from the Court under Local Rule 7.1(b) and (f).¹ In their sur-replies, they assert that they completed their PFSs to the best of their abilities and that dismissal is a harsh and unwarranted sanction. Guidant informally moved to strike the improper sur-replies. Seven days later, Brady-Long and Weiss filed motions seeking permission to file their sur-replies.

The Court has discretion to dismiss a case with prejudice when a party fails to comply with a court's order or permit discovery. *See* Fed. R. Civ. P. 37(b)(2) and 41(b); *Hutchins v. A.G. Edwards & Sons, Inc.*, 116 F.3d 1256, 1260 (8th Cir. 1997).

Brady-Long's and Weiss's failures to comply with the Court's Orders demonstrate a pattern of intentional delay, prejudice Guidant's ability to mount a defense, and adversely impacts this Court's ability to manage its MDL docket. Moreover, their repeated failures to comply with the Court's Orders and respond to Guidant's motions have caused Guidant to incur unnecessary attorney fees and expenses.

¹ The Court again reminds all parties in the MDL that they must familiarize themselves with and follow the Local Rules for the District of Minnesota. Failure to do so could result in sanctions.

Based on a review of the record and recognizing that dismissal is an extreme sanction, the Court hereby enters the following:

ORDER

1. Brady Long and Weiss shall comply with the Court's January 31, 2006 Order and fully complete their individual PFSs no later than seven (7) days from the date of this Order. The Court recognizes that plaintiffs are completing PFSs for deceased persons and that therefore, consistent with the instructions on the PFSs, Brady-Long and Weiss must complete their individual PFSs "as completely as [they] can." Moreover, they must complete the PFSs in accordance with all Orders entered to date concerning the PFSs and medical authorization forms. The Court expects Brady-Long and Weiss to communicate often with Guidant to ensure that they complete all documentation needed to satisfy the January 31, 2006 Order no later than seven (7) days from the date of this Order. If Brady-Long and Weiss fail to do so, the Court will find that they have acted in bad faith for failing to comply with the Court's Orders. The Court will then immediately dismiss their cases with prejudice.

2. Federal courts possess the inherent power to sanction misconduct. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991). As a direct result of Brady-Long's and Weiss's disregard of the Court's Orders, in particular the Court's January 31, 2006 Order, Guidant has incurred unnecessary attorney fees and expenses in filing its Motions to Dismiss and its informal motions to strike. For that reason and under the Court's inherent powers, the Court orders Brady-Long and Weiss to each individually reimburse Guidant \$1,000 for reasonable attorney fees and expenses incurred as a result of their

misconduct. Brady-Long and Weiss shall make these payments to Guidant no later than seven (7) days from the date of this Order.

3. The Court will not tolerate any further disregard of its Orders by Brady-Long or Weiss. In the future, Brady-Long, Weiss, and their counsel are expected to keep actively apprised of the status of the MDL and in contact with the PLC. If Brady-Long or Weiss miss another deadline, the Court will not hesitate to dismiss their Complaints.

4. Guidant's Motions to Dismiss (MDL 05-1708 (DWF/AJB), Doc. Nos. 509 and 524; Civ. No. 06-2124 (DWF/AJB), Doc. No. 4; Civ. No. 06-2126 (DWF/AJB), Doc. No. 4) are **DENIED**.

5. Brady-Long's and Weiss's Motions to File Sur-Replies (Civ. No. 06-2124 (DWF/AJB), Doc. No. 12; Civ. No. 06-2126 (DWF/AJB), Doc. No. 13) are **DENIED AS MOOT**.

Dated: November 7, 2006

s/Donovan W. Frank
DONOVAN W. FRANK
Judge of United States District Court